

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

**THANG CUNG, Individually and on
behalf of All Others Similarly Situated**

PLAINTIFF

vs.

No. 5:19-cv-637-JKP-RBF

**H.E.B., INC.; H-E-B, LP; TOKYO GARDENS
CATERING, L.L.C.; and THANG MAWI**

DEFENDANTS

JOINT MOTION FOR DISMISSAL OF CASE WITH PREJUDICE

COME NOW Plaintiff Thang Cung and Defendants H.E.B., Inc.; H-E-B, LP; Tokyo Gardens Catering, L.L.C.; and Thang Mawi (collectively “Defendants”), by and through their undersigned counsel, and for their Joint Motion for Dismissal of Case with Prejudice, they do hereby state and allege as follows:

1. Plaintiffs filed this lawsuit against Defendants alleging violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*
2. The FLSA requires employers to pay overtime compensation to employees who work more than forty (40) hours in a workweek. 29 U.S.C. § 207(a)(1). The Parties’ claims and defenses alleged in the litigation indicate that bona fide disputes exist regarding the amount of minimum and overtime wages paid and owed to Plaintiff, and to what extent Plaintiff worked more than forty (40) hours in a workweek.
3. After arms-length negotiations in which the Parties were all represented by counsel, Plaintiff and Defendant Thang Mawi have resolved all issues and entered into a Settlement Agreement and Release of All Claims (“Settlement Agreement”); the

Parties believe the Settlement Agreement is a fair, reasonable and adequate compromise of a bona fide dispute.

4. Defendant Mawi is representing himself in this case; however, he was represented by counsel in negotiating settlement.

5. Defendants H.E.B., Inc.; H-E-B, LP; and Tokyo Gardens Catering, L.L.C. are not parties to the settlement agreement. Defendants H.E.B., Inc.; H-E-B, LP; and Tokyo Gardens Catering, L.L.C. maintain that they are not Plaintiff's employers and as such, have no liability for unpaid wages under the FLSA.

6. Because the Parties' claims and defenses indicate disputes regarding whether some Defendants are an employer subject to the Fair Labor Standards Act, regarding the amount of minimum and overtime wages paid and owed to Plaintiff, and to what extent Plaintiff worked more than forty (40) hours in a workweek, if any, this Court may find that bona fide disputes exist. The Parties believe that the settlement is a fair and reasonable resolution of their disputes.

7. Court approval of the Settlement Agreement is not necessary. *Martin v. Spring Break '83 Prods., L.L.C.*, 688 F.3d 247, 256 (5th Cir. 2012); *Martinez v. Bohls Bearing Co.*, 361 F. Supp. 2d 608, 630 (W.D. Tex. 2005). However, if the Court desires to review the terms of the Settlement Agreement, the Parties ask for leave to submit the agreement to the Court for review in camera because they desire to keep the Settlement Agreement confidential.

8. Therefore, the Parties respectfully request that this Court dismiss Plaintiff's claims against all Defendants with prejudice and enter the Order Granting Joint Motion to Dismiss with Prejudice, attached as Exhibit "A" to this Motion.

9. The Parties agree that each party will bear their own attorney's fees and costs.

WHEREFORE, premises considered, Plaintiff and Defendants respectfully request that this matter be dismissed with prejudice, and for all other necessary and proper relief.

Respectfully submitted,

PLAINTIFF THANG CUNG

SANFORD LAW FIRM, PLLC
One Financial Center
650 South Shackleford, Suite 411
Little Rock, Arkansas 72211
Telephone: (501) 221-0088
Facsimile: (888) 787-2040

Merideth Q. McEntire
Texas Bar No. 24105123
merideth@sanfordlawfirm.com

/s/ Josh Sanford
Josh Sanford
Texas Bar No. 24077858
josh@sanfordlawfirm.com

**ATTORNEYS FOR DEFENDANT
H.E.B., INC. AND H-E-B, LP**

/s/ Lawrence D. Smith
Lawrence D. Smith, Esq.
Texas Bar No. 18638800
Mark A. McNitzky, Esq.
Texas Bar No. 24065730
OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.
2700 Weston Centre
112 East Pecan Street
San Antonio, Texas 78205
Telephone: (210) 354-1300
Facsimile: (210) 277-2702
Larry.Smith@ogletreedeakins.com
Mark.McNitzky@ogletreedeakins.com

**ATTORNEY FOR DEFENDANT
TOKYO GARDENS CATERING, L.L.C.**

/s/ David A. Fettner
David A. Fettner, Esq.
Texas Bar No. 00784048
FETTNER THOMPSON
6700 Sands Point Drive
Houston, TX 77027
Telephone: (713) 626-7277
Fax: 888-876-2292
services@fettnerthompson.com

PRO SE DEFENDANT THANG MAWI

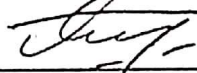
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Thang Mawi

**ATTORNEY FOR DEFENDANT
TOKYO GARDENS CATERING, L.L.C.**

David A. Fettner, Esq.
Texas Bar No. 00784048
FETTNER THOMPSON
6700 Sands Point Drive
Houston, TX 77027
Telephone: (713) 626-7277
Fax: 888-876-2292
services@fettnerthompson.com

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